

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,

v.

KEVIN MYSZKA,

Defendant.

**STATEMENT WITH
RESPECT TO SENTENCING
FACTORS UNDER FED. R.
CRIM. P. 32(f)(1)**

Docket No.: 18-CR-78-A

Pursuant to Federal Rule of Criminal Procedure 32(f)(1), the defendant, Kevin Myszka, through his attorneys, Connors LLP (Terrence M. Connors, Esq., and James W. Grable, Jr., Esq.), as his statement with respect to sentencing factors, states that he and his counsel have reviewed the draft Presentence Report (“PSR”), and his counsel has communicated a few minor revisions to the PSR to the United States Probation Officer. It is anticipated that these revisions will be incorporated into the draft PSR. Assuming they will be, the defense has no objections to the PSR.

Mr. Myszka respectfully reserves the right to file an objection to any unincorporated revisions or any additional material that may be added to the PSR by way of addendum, attachment, revision, or other means that are not currently included in the draft PSR.

Additionally, the defense intends to provide this Court with character letters, mitigating information, and a sentencing memorandum based on the factors set forth in 18 U.S.C. § 3553. These items will be provided in accordance with the Court's Order at Docket Entry 155. In that regard, as a precaution, it is respectfully requested that this Court disclose to the defendant all information and any alleged facts this Court will consider in imposing a sentence that may negatively impact Mr. Myszka and about which he has no prior notice from the PSR. *See United States v. Louis*, 814 F.2d 852, 858 (2d Cir. 1987); *United States v. Rivera*, 96 F.3d 41, 43 (2d Cir. 1996); *United States v. Peterson*, 711 F.3d 770, 778 (7th Cir. 2013); *United States v. Kappes*, 782 F.3d 828, 842-43 (7th Cir. 2015) (discussing the importance of providing notice in the PSR of conditions of release that might be imposed at sentencing and discussing the Circuit's recommendation that the probation office include any recommended conditions of supervised release—and the reasons for the recommendations—in the presentence report that is disclosed to the parties prior to the sentencing hearing); *see also United States v. Michael*, 18-CR-00120-LJV-MJR, Dkt. Item No. 311 (W.D.N.Y. Oct. 23, 2019) (text order holding that a defendant's motion "seeking disclosure of the sentencing recommendation under Federal Rule of Criminal Procedure 32(e)(3) is granted").

DATED: May 6, 2025
Buffalo, New York

/s/ James W. Grable, Jr.
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